

Patent Litigation in the UK: An Overview

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We provide the first detailed analysis of all patent cases heard by all relevant courts in England and Wales during the period 2000-2008. For this purpose, we construct a dataset that contains all law suits filed at the Patents County Court, the Patents Court at the High Court, the Court of Appeal as well as the House of Lords/Supreme Court. In our analysis, we look at characteristics of the litigating parties, patents at dispute, as well as case-specific characteristics and outcomes.

Our data suggest that patent litigation in the UK is a highly internationalised service. We have a substantially higher number of foreign than domestic claimants and defendants. We find that most companies in our dataset are in the metals and machinery industry, followed by trade and R&D services. This is interesting, because our analysis of the litigated patents indicates that most patents protect chemical and pharmaceutical inventions.

We show that only about half of all cases are filed alleging the infringement of a patent. Around 36% of cases seek the revocation of a patent. We find that only half of all cases filed end with a final judgment. More than half of all cases that did not end with a judgment were settled. Cross-tabulating the information on the number of litigating parties and the outcome (final judgment yes/no) suggests that cases with a single claimant and/or defendant are more likely to settle than cases that involve a large number of litigating parties.

Regarding case outcomes, when we examine the cases which ended with a judgment, we find that the by far most likely outcome is the revocation of a patent – regardless of whether the case was filed as an infringement or revocation action. Finally, we show some evidence on appeals. We find that about a third of all cases proceed to the Court of Appeal where in 80% of cases the judgment of the Patents Court is upheld. We also provide a detailed discussion of the five cases that were allowed to proceed to the House of Lords.

While detailed data on the costs involved in litigation is sparse, our data allow us in combination with existing anecdotal evidence to make some tentative statements about the magnitude of the costs involved in litigation. Our data indicates that most cases involve total costs for both claimant(s) and defendant(s) at the order of £1 to 6 million.

We also offer some descriptive evidence on litigation that involves Non-Practicing Entities (NPEs). We find seven companies that have been identified in the literature as NPEs to be involved in 14 cases between 2000 and 2008. Strikingly, in most cases the revocation of NPEs' patents is sought. Our data indicate that in none of the 14 cases the court held the NPEs' patents to be infringed, with the exception of one claim of one patent in *Nokia v Interdigital*, a case involving three other patents which were found to be invalid. In six cases the NPE's patents were revoked. We find that the litigated NPE patents overwhelmingly protect ICT related technologies. The data on costs for these cases indicate that NPEs were liable to the payment of substantial amounts to the winning parties. This may represent an important restraining factor with regard to the ability of NPEs to sue in the UK – especially relative to the US where costs are non-recoverable.